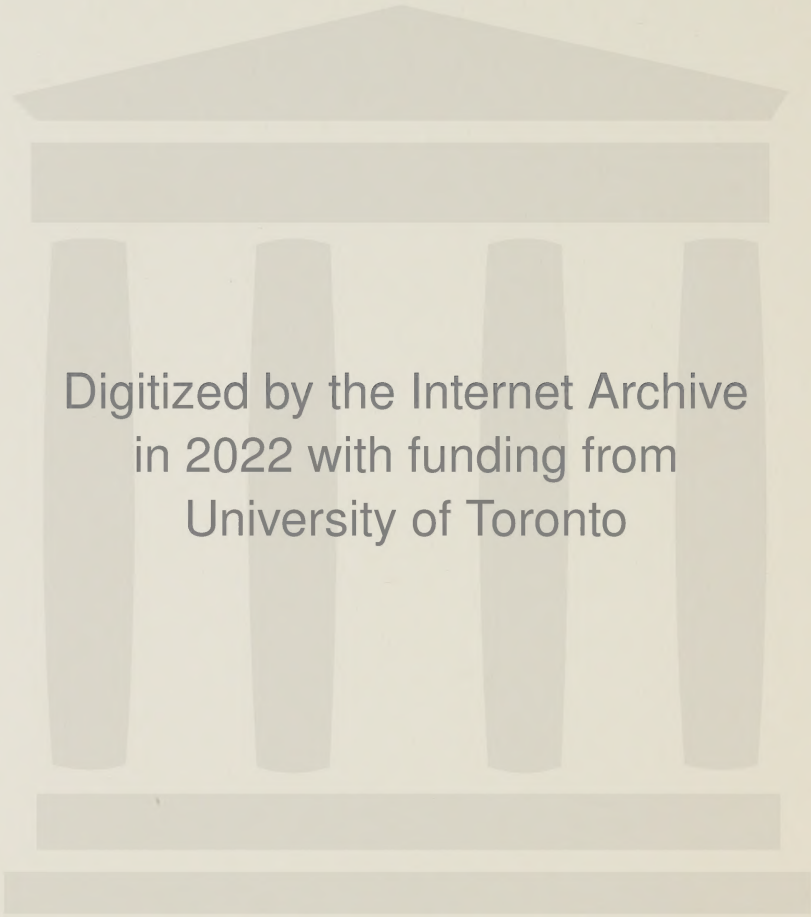
# THE ONTARIO ADVISORY COUNCIL ON WOMEN'S ISSUES

## A SUBMISSION TO THE ONTARIO GOVERNMENT ON

# PAY EQUITY!



ONTARIO ADVISORY COUNCIL ON WOMEN'S ISSUES
CONSEIL CONSULTATIF DE L'ONTARIO SUR LA CONDITION FÉMININE
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Honourable Ian Scott,
Minister Responsible for Women's Issues,
Parliament Buildings,
Queen's Park,
Toronto, Ontario.

Dear Sir:

On behalf of the Ontario Advisory Council of Women's Issues, I am pleased to forward our advice and comments regarding the Green Paper on Pay Equity and the proposed legislation to implement pay equity in the Ontario public service.

The Advisory Council views women's economic status to be of paramount concern and we see policies for implementing pay equity to be critical to women's achievement of economic equality.

As the Advisory Council's mandate includes consultation with Ontario women, we have undertaken a very broad based consultation process on the Green Paper. Our advice to you includes the input we received from Ontario women.

Our response to Bill 105 is given after our own very detailed study. Since most women's organizations have not had an opportunity to review Bill 105, it is our expectation that Council's analysis will be used by these organizations as they prepare their own responses to this legislative proposal.

In addition to this report, our other consultation documents from previous years on equal pay may be useful in the Government's deliberations regarding the implementation of equal pay.

It is our hope that the Ontario Government will adopt a forceful approach to ensure that women's work is valued and remunerated on an equitable basis.

Yours truly,

Sam Ion

Sam Ion
President.

Toronto,
June, 1986.

cc: Premier Peterson
Honourable William Wrye

ONTARIO ADVISORY COUNCIL ON WOMEN'S ISSUES

# RESPONSE TO

# THE ONTARIO GOVERNMENT GREEN PAPER ON PAY EQUITY

# AND TO

# BILL 105: PUBLIC SERVICE PAY EQUITY ACT, 1986

June, 1986

## ONTARIO ADVISORY COUNCIL ON WOMEN'S ISSUES

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# ACKNOWLEDGEMENTS

The submission of this particular report to the Government of Ontario is the culmination of a long process of consultation and study undertaken by the Advisory Council.

The Advisory Council wishes to acknowledge the co-operation and participation of many women's organizations and practitioners who have assisted us in this process.

We would also like to recognize the Advisory Council's Employment Committee members, resource persons and staff who have guided and informed our work.

Employment Committee members: Ceta Ramkhalawansingh (Chair), Sandra Kerr, Eva Marszewski, Dorothy Kirby-Rawn, Barbara Stone; Resource Persons: Mary Eberts, Marion Lane; Staff: Corinne Cowles, Daphne Hay, Lydia Oleksyn, Bridget Vianna.

TABLE OF CONTENTS

Part B

## SUMMARY

On November 19, 1985, the Ontario Government tabled in the Legislature a Green Paper on Pay Equity in the broader public sector and the private sector. The purpose of the Government Green Paper was three-fold. The first to proclaim the commitment of the Government to implementing pay equity, or equal pay for work of equal value, in both the public and the private sectors. The second was to define the basic premises of the Government's pay equity policy. The third was to invite public consultation on options for developing and implementing that policy. The Green Paper states clearly:

> Pay equity is a fundamental goal of this Government. The achievement of this goal is not at issue. Only the methods by which it will be achieved are open for debate, discussion and, finally, decision.

On February 22, 1986, the Minister of Labour tabled Bill 105, the Public Service Pay Equity Act, 1986 for first reading in the Legislature. This Bill defines how the Government proposes to provide pay equity in the public service and in specified boards, agencies and commissions of the Government.

The Ontario Advisory Council on Women's Issues is an arms-length advisory body to the Ontario Government on all matters pertaining to women. The mandate of the Advisory Council is to monitor legislation, policies and programs, make recommendations for new initiatives, and stimulate public discussion throughout the Province. In February, the Advisory Council circulated widely a

draft response to the Government's Green Paper on Pay Equity. On March 7, 1986, the Advisory Council sponsored an Ontario Women's Forum on Pay Equity which drew participants from across the Province. Oral presentations at that Forum and briefs subsequently received by the Advisory Council on the Green Paper have been reviewed and incorporated into this Response.

The Advisory Council has consistently supported the need for pay equity. Our concern with the Government's Green paper is that pay equity has been too narrowly defined, and methods of implementation may undermine the objective to be achieved. Our objective is equal pay for work of equal value as a fundamental labour standard, based on comparisons according to job content. The objective of the Government, as illustrated in its basic premise and its proposed methods of implementation, is significantly more limited. We fear that "pay equity" as "a fundamental goal of this Government" may be a pale imitation of the real thing.

As part of its research and public education mandate, the Advisory Council undertook a detailed study of Bill 105. As most organizations have not yet completed their review of Bill 105, this additional analysis of the Bill was undertaken by the Advisory Council at the request of women attending the Pay Equity Forum. This response to Bill 105 will assist many organizations as they prepare their own responses to this legislative proposal.

Bill 105 epitomizes our concern. In our view, the proposed Bill is an ingenious sleight-of-hand, an effort to meet the public demand for pay equity with minimal commitment to the fundamental principles of equal pay for work of equal value. It is an approach which will not provide real pay equity to the majority of employees within the public sector, and which bodes ill as a precedent for pay equity implementation in the private sector.

This Response is divided into two sections. Part A deals with the Green Paper on Pay Equity; Part B responds to Bill 105.

# SUMMARY OF RECOMMENDATIONS

## PART A: GREEN PAPER ON PAY EQUITY

### RECOMMENDATION #1

A) THE GOVERNMENT SHOULD TABLE COMPREHENSIVE DRAFT LEGISLATION IMMEDIATELY, ONE BILL FOR ALL SECTORS OF THE ECONOMY.

B) THE LEGISLATION SHOULD REGARD PAY EQUITY AS A BASIC LABOUR STANDARD, EQUALLY ACCESSIBLE TO INDIVIDUALS AND GROUPS.

C) THE DRAFT LEGISLATION SHOULD ENSURE THAT METHODS OF IMPLEMENTATION ARE BROADLY AND LIBERALLY DEFINED SO THAT EQUAL PAY FOR WORK OF EQUAL VALUE IS ACHIEVED.

### RECOMMENDATION #2

A) PAY EQUITY SHOULD BE BROADLY DEFINED TO APPLY TO ALL SECTORS AND TO EVERYONE ACCORDING TO JOB CONTENT.

B) THERE SHOULD BE NO EXCLUSIONS OR DELAYS FOR SMALL EMPLOYERS. PART-TIME WORKERS, TRAINEES, STUDENTS, REHABILITATION POSITIONS, CASUAL AND CONTRACT WORKERS, AND WORKERS WHO DO PIECEWORK SHOULD ALL BE COVERED.

C) THERE SHOULD BE NO GENDER PREDOMINANCE GUIDELINES.

D) LEGISLATION SHOULD INCLUDE RECOGNITION OF PAY EQUITY COMPARISONS BASED ON PROPORTIONAL VALUE.

E) IF GENDER PREDOMINANCE RESTRICTIONS ARE RETAINED (WHICH WE OPPOSE), S.33 OF THE EMPLOYMENT STANDARDS ACT SHOULD BE AMENDED TO INCLUDE EQUAL PAY FOR WORK OF EQUAL VALUE AND THE COMPOSITE TEST AS DEFINED BY S.4 OF BILL 105.

### RECOMMENDATION #3

A) DEFINITIONS IN PAY EQUITY LEGISLATION SHOULD ENSURE THE BROADEST POSSIBLE COVERAGE.

B) "ESTABLISHMENT" SHOULD BE BASED ON A CORPORATE DEFINITION AND EXTEND TO ASSOCIATED AND RELATED COMPANIES, FRANCHISES, SUCCESSSOR COMPANIES, AND COMPANIES DOING WORK "CONTRACTED OUT". UNINCORPORATED EMPLOYERS SHOULD BE TREATED AS A CORPORATION FOR PAY EQUITY PURPOSES.

C) "ESTABLISHMENT" SHOULD BE DEFINED TO ALLOW FOR THE BROADEST POSSIBLE APPLICATION IN PROBLEM SECTORS, E.G. THE BROADER PUBLIC SECTOR, PROVINCE-WIDE BARGAINING UNITS, COMMUNITIES CHARACTERIZED BY SMALL BUSINESS WITH FEW EMPLOYEES, CHILDCARE SECTOR.

D) JOB EVALUATION SYSTEMS SHOULD BE SUBJECT TO COMPREHENSIVE MINIMUM STATUTORY STANDARDS, INCLUDING:

1) A MANDATORY SCHEME COVERING ALL JOBS AND ALL BARGAINING UNITS;

2) MANDATORY EMPLOYER-EMPLOYEE PARTICIPATION;

3) GENDER-NEUTRAL DESIGN AND APPLICATION;

4) BIAS-FREE FACTORS AND WEIGHTING;

5) CONSISTENT APPLICATION;

6) A PROCESS OF VALIDATION.

E) "EQUAL VALUE" SHOULD MEAN "A BAND OF EQUAL VALUE" WITH ANY DISPUTES SUBJECT TO ARBITRATION OR RESOLUTION BY AN INDEPENDENT TRIBUNAL.

F) "EQUAL PAY" SHOULD BE BASED ON TOTAL COMPENSATION, INCLUDING ALL BENEFITS.

RECOMMENDATION #4

PAY EQUITY LEGISLATION SHOULD NOT CODIFY ANY "ALLOWABLE EXCEPTIONS."

RECOMMENDATION #5

A) PAY EQUITY LEGISLATION SHOULD AS A GENERAL PRINCIPLE LEAVE METHODS OF PAY ADJUSTMENT TO NEGOTIATION.

B) THE PAY EQUITY LAW SHOULD INCLUDE:

1) A PROHIBITION AGAINST LOWERING WAGES;

2) PROVISION FOR INTERIM INITIAL ADJUSTMENTS;

3) MANDATORY SPECIFIC DATES FOR INITIAL ADJUSTMENTS;

4) PROVISION FOR SPECIFIC PLANS TO MONITOR ONGOING DISCREPANCIES AND TO ELIMINATE THE DIFFERENCE WITHIN A SPECIFIC PERIOD OF TIME;

5) A MANDATORY CONTRIBUTION BY EMPLOYERS TO A PAY EQUITY SAVINGS FUND FOR PAY EQUITY ADJUSTMENTS.

C) THERE SHOULD BE NO LIMIT ON BACK-PAY AWARDS AFTER FULL IMPLEMENTATION IS REQUIRED.

RECOMMENDATION #6

A) PAY EQUITY LEGISLATION SHOULD PROVIDE FOR UNIVERSAL MANDATORY IMPLEMENTATION THROUGH THE DEVELOPMENT OF A MANDATORY PAY EQUITY PLAN WITHIN EACH ESTABLISHMENT INCLUDING SPECIFIC DATES FOR COMPLETION OF JOB EVALUATION SCHEMES AND SPECIFIC DATES FOR IMPLEMENTATION OF PAY ADJUSTMENTS. ALL PLANS SHOULD BE FILED WITH THE ENFORCING AGENCY.

B) LEGISLATION SHOULD PROVIDE FOR EMPLOYEE PARTICIPATION IN THE DEVELOPMENT OF PAY EQUITY PLANS.

C) IN THE ORGANIZED SECTOR, COLLATERAL AMENDMENTS TO THE PAY EQUITY LAW OR THE LABOUR RELATIONS ACT SHOULD INCLUDE:

1) A PROVISION THAT EQUAL PAY FOR WORK OF EQUAL VALUE IS AN IMPLIED TERM IN ALL COLLECTIVE AGREEMENTS;

2) A DUTY TO BARGAIN PAY EQUITY IN GOOD FAITH;

3) A PROHIBITION AGAINST BARGAINING AWAY PAY EQUITY ADJUSTMENTS;

4) THE RIGHT TO COMPLAIN AGAINST UNFAIR REPRESENTATION IN PAY EQUITY NEGOTIATIONS;

5) PROTECTION AGAINST REPRISALS FOR NEGOTIATING OR ENFORCING PAY EQUITY PLANS.

D) IN NON-UNIONIZED SITUATIONS, THERE SHOULD BE A DUTY ON EMPLOYERS TO INCLUDE EMPLOYEE REPRESENTATIVES IN DEVELOPING THE PLAN. REGULATIONS SHOULD DEFINE HOW REPRESENTATIVES SHOULD BE CHOSEN.

E) LEGISLATION SHOULD ALSO PROVIDE FOR:

1) FULL DISCLOSURE OF INFORMATION RE JOBS, COMPENSATION AND PAY EQUITY PLANS;

2) PROTECTION AGAINST REPRISALS;

3) REFERRAL OF DISPUTES TO TRIPARTITE ARBITRATION OR TO AN INDEPENDENT TRIBUNAL.

F) THE PUBLIC EDUCATION MANDATE OF THE ADMINISTRATIVE AGENCY SHOULD BE DEFINED BY STATUTE INCLUDING THE PROVISION OF ADVICE AND ASSISTANCE, DATA COLLECTION, RESEARCH, PUBLIC EDUCATION, PUBLICATION, AND A MANDATORY ANNUAL REPORT TO THE LEGISLATURE.

RECOMMENDATION #7

PAY EQUITY LEGISLATION SHOULD PROVIDE FOR COMPREHENSIVE ENFORCEMENT MECHANISMS INCLUDING:

A) THE POWERS NECESSARY FOR A SYSTEMIC APPROACH TO ENFORCEMENT (AS DEFINED ON PAGE 23).

B) CONTRACT COMPLIANCE.

RECOMMENDATION #8

A) PAY EQUITY SHOULD BE ADMINISTERED BY A NEW EMPLOYMENT EQUITY COMMISSION WITH RESPONSIBILITY FOR ALL EMPLOYMENT EQUITY ISSUES.

B) AN INDEPENDENT TRIBUNAL SHOULD BE CREATED TO ADJUDICATE PAY EQUITY DISPUTES.

RECOMMENDATION #9

PAY EQUITY BE INCLUDED IN A COMPREHENSIVE EMPLOYMENT EQUITY POLICY INCLUDING LEGISLATION FOR AFFIRMATIVE ACTION, UPGRADED EMPLOYMENT STANDARDS, A REVIEW OF THE LEGAL STATUS OF DOMESTIC WORKERS, PIECEWORKERS AND INDEPENDENT CONTRACTORS, UNIVERSALLY ACCESSIBLE CHILDCARE, EXTENDED EDUCATION AND JOB TRAINING OPPORTUNITIES, REDUCED STEREOTYPING AND STREAMING IN SCHOOLS, EXPANDED PENSIONS AND OTHER BENEFITS FOR PART-TIME WORKERS, CONTRACT WORKERS AND HOMEMAKERS CARING FOR DEPENDENTS, GREATER UNIONIZATION AMONG WOMEN WORKERS.

PART B: BILL 105 - PUBLIC SERVICE PAY EQUITY ACT

RECOMMENDATION #1

A) BILL 105 SHOULD BE RECAST AS AN INTERIM INITIAL ADJUSTMENT SCHEME SUBJECT TO COMPLETE, ACCURATE PAY EQUITY ADJUSTMENTS AFTER A COMPREHENSIVE JOB EVALUATION SYSTEM HAS COMPARED ALL JOBS AND ALL CLASSIFICATIONS WITHIN THE PUBLIC SERVICE AND RELATED AGENCIES WITH EACH OTHER.

B) THE GOVERNMENT SHOULD INITIATE IMMEDIATELY THE DEVELOPMENT OF A COMPREHENSIVE JOB EVALUATION SYSTEM WITHIN THE PUBLIC SERVICE AND RELATED AGENCIES.

C) ALTERNATIVELY BILL 105 SHOULD BE SENT BACK FOR SUBSTANTIAL REDRAFTING OR CONSIDERATION GIVEN TO WITHDRAWING THIS BILL.

RECOMMENDATION #2

A) THE LANGUAGE OF BILL 105 NEEDS TO BE SIMPLIFIED AND CLARIFIED, SO THAT THE OPERATION OF THE LEGISLATION IS APPARENT TO ALL EMPLOYEES.

B) DEFINITIONS NEED TO BE CLARIFIED AND MISLEADING REFERENCES REMOVED.

C) "PART III - PART VI PLAN" DISTINCTIONS SHOULD BE REMOVED, AND ONE CONSOLIDATED PAY EQUITY PLAN BE REQUIRED APPLICABLE TO ALL EMPLOYEES AT THE SAME TIME (AS IN MANITOBA).

RECOMMENDATION #3

A) PAY EQUITY SHOULD BE AVAILABLE TO EVERYONE IN THE PUBLIC SERVICE BASED ON JOB CONTENT.

B) THE TITLE AND PURPOSE OF BILL 105 SHOULD DELETE REFERENCE TO GENDER PREDOMINANCE.

C) THERE SHOULD BE NO GENDER PREDOMINANCE GUIDELINES CODIFIED BY STATUTE.

RECOMMENDATION #4

A) PAY EQUITY IN THE PUBLIC SERVICE SHOULD BE BASED ON A COMPREHENSIVE JOB EVALUATION SCHEME AND ACTUAL COMPARISONS BETWEEN ALL JOBS OR CLASSIFICATIONS WITHIN THAT SCHEME.

B) THE COMPARISON OF BENCHMARK JOBS AND RELATED ACROSS-THE-BOARD INCREASES APPROACH IMPOSED BY BILL 105 SHOULD BE REDEFINED AS AN INTERIM INITIAL ADJUSTMENT ONLY PENDING THE RESULTS OF A COMPREHENSIVE JOB EVALUATION SCHEME.

RECOMMENDATION #5

S.8 OF BILL 105 SHOULD BE DELETED.

RECOMMENDATION #6

A) THE METHOD OF WAGE ADJUSTMENT SHOULD NOT BE CODIFIED AT THE LOWEST COMPARABLE JOB RATE. SUCH CODIFICATION IS REDUNDANT.

B) S.5(4) OF BILL 105 SHOULD BE DELETED.

C) S.11(3)(a)(i), (b)(i) OF BILL 105 SHOULD PROVIDE FOR IMMEDIATE FIRST ADJUSTMENTS. THE 18 MONTH DELAY SHOULD BE DELETED.

D) IF PART V AND PART VI PLANS ARE TO BE PHASED IN (WHICH WE OPPOSE), FIRST ADJUSTMENTS IN S.11(3)(c)(d) SHOULD NOT BE TIED TO LAST PAYMENTS ON EARLIER PLANS.

E) BILL 105 SHOULD REQUIRE BACK-PAY ADJUSTMENTS FROM THE DATE OF PROCLAMATION.

F) S.11(7) AND S.19 (2)(m) OF BILL 105 SHOULD BE DELETED.

RECOMMENDATION #7

A) THE TIMETABLE FOR DEVELOPMENT OF PAY EQUITY PLANS SHOULD BE EXTENDED SIMILAR TO THE MANITOBA MODEL, TO ALLOW FOR A COMPREHENSIVE JOB EVALUATION SCHEME AND ACTUAL COMPARISONS.

B) ALTERNATIVELY, THE BENCHMARK COMPARISON SHOULD BE RESTRUCTURED AS AN INTERIM ADJUSTMENT WITH INITIAL PAYMENTS DUE IMMEDIATELY.

C BILL 105 SHOULD BE AMENDED TO PROVIDE FOR THE PARTICIPATION OF UNORGANIZED WORKERS THROUGH "EMPLOYEE REPRESENTATIVES" AS IN MANITOBA.

D) BILL 105 SHOULD BE AMENDED TO PROTECT THE RIGHTS OF EMPLOYEES INCLUDING:

1) PROTECTION FROM REPRISALS;

2) MANDATORY DISCLOSURE OF INFORMATION NECESSARY TO DEVELOP AND IMPLEMENT THE PAY EQUITY PLAN;

3) POSTING REQUIREMENTS FOR ALL PAY EQUITY PLANS;

4) PUBLIC ACCESS TO PAY EQUITY PLANS FILED WITH THE COMMISSION.

RECOMMENDATION #8

A) S.1(1) OF BILL 105 DEFINITION OF "ARBITRATION" SHOULD BE AMENDED TO PROVIDE FOR A TRIPARTITE ARBITRATION BOARD.

B) S.13 OF BILL 105 SHOULD BE AMENDED TO PROVIDE FOR REFERRAL TO TRIPARTITE ARBITRATION AS A MATTER OF RIGHT WITHOUT REFERENCE TO THE MINISTER.

C) S.13 OF BILL 105 SHOULD BE AMENDED TO:

1) SET OUT THE SPECIFIC REMEDIAL POWERS OF ARBITRATION INCLUDING THE POWER TO MAKE BINDING ORDERS;

2) PROVIDE THAT SUCH ORDERS HAVE THE SAME EFFECT AS ORDERS MADE BY THE PAY EQUITY COMMISSION UNDER S.20(4), AND ARE SUBJECT TO ENFORCEMENT AS A COURT ORDER AS IN S.21.

RECOMMENDATION #9

A) S.17(6) OF BILL 105 SHOULD BE AMENDED TO PROVIDE THAT THE COMMISSION SHALL HAVE ITS OWN INDEPENDENT RESOURCES, AND MAY USE GOVERNMENT SERVICES OR FACILITIES IF APPROPRIATE.

B) S.17(7) OF BILL 105 SHOULD BE AMENDED TO DELETE ANY REQUIREMENT OF MANAGEMENT BOARD APPROVAL.

C) THE COMMISSION SHOULD HAVE SUBSTANTIAL INDEPENDENCE AND BE ACCOUNTABLE DIRECTLY TO THE LEGISLATURE, LIKE THE OMBUDSMAN.

RECOMMENDATION #10

A) THE ONGOING PROACTIVE ROLE OF THE PAY EQUITY COMMISSION SHOULD BE EXAMINED AND POWERS DEFINED ACCORDINGLY, INCLUDING THE POWER UNDER S.26 TO INITIATE COMPLAINTS.

B) AN INDEPENDENT APPEALS TRIBUNAL SHOULD BE ESTABLISHED TO ADJUDICATE COMPLAINTS.

RECOMMENDATION #11

A) S.18(6) SHOULD BE AMENDED TO PROVIDE AN ABSOLUTE RIGHT TO A HEARING.

B) BILL 105 SHOULD SPECIFY THAT THE STATUTORY POWERS PROCEDURE ACT APPLIES TO ALL PROCEEDINGS BEFORE TRIPARTITE ARBITRATION BOARDS, THE COMMISSION AND THE TRIBUNAL UNDER THIS ACT.

RECOMMENDATION #12

A) S.25 OF BILL 105 SHOULD BE AMENDED TO DELETE SPECIFIC REFERENCES TO TYPES OF COMPLAINTS AND THE PROPOSED LIMITATION PERIODS.

B) THE GENERAL COMPLAINTS PROVISION IN S.26 SHOULD APPLY IMMEDIATELY UPON PROCLAMATION. PROVISION SHOULD BE MADE FOR THIRD PARTY COMPLAINTS AND COMMISSION-INITIATED COMPLAINTS.

C) PART VIII SHOULD INCLUDE AN ABSOLUTE RIGHT TO A HEARING OF COMPLAINTS AND PROTECTION FROM REPRISALS.

RECOMMENDATION #13

AMENDMENTS SHOULD BE MADE AS INDICATED TO S.19(2)(1), S.21, S.22(2) AND S.28(1)(b)(c) SHOULD BE DELETED.

RECOMMENDATION #14

A) BILL 105 SHOULD BE EXTENDED TO INCLUDE THE BROADER PUBLIC SECTOR AS DEFINED BY THE WAGE RESTRAINT LAWS.

B) CONTRACT COMPLIANCE WITHIN THE PUBLIC SECTOR SHOULD BE IMPLEMENTED IMMEDIATELY.

RECOMMENDATION #15

A) THE PAY EQUITY COMMISSION SHOULD BE RENAMED THE EMPLOYMENT EQUITY COMMISSION CHARGED WITH THE ADMINISTRATION AND ENFORCEMENT OF ALL EMPLOYMENT EQUITY ISSUES.

B) BILL 105 SHOULD INCLUDE MANDATORY AFFIRMATIVE ACTION.

# PART A

## RESPONSE TO THE

## ONTARIO GREEN PAPER ON PAY EQUITY

## PAY EQUITY LEGISLATION LONG OVERDUE

The concept of equal pay for work of equal value is not new. Numerous international conventions, laws and policies in other jurisdictions as well as legislation at the federal level, in Quebec and Manitoba, recognize the right to pay equity.[1]

In Ontario, acceptance of pay equity has not come easily. There have been discussion papers, research reports, public hearings, private members' bills, resolutions of the Legislature, interim proposals and a consistent effort by the women of Ontario pressing for the "real thing". At last, there appears to be a consensus that the right to pay equity is long overdue and that the Government should move to legislation and implementation as soon as possible.

We congratulate the Government on its commitment to pay equity and on its determination to move forward quickly. We trust that the Government consultation has not re-opened the debate on the principle itself, but has focussed, as was intended, on methods of implementation.

We are concerned, however with the definition and scope of the Government's objectives, as set out in the Government Green Paper. Ostensibly, pay equity is to address the "undervaluation of women's work" (p.11) "by enabling comparisons between different jobs" (p.14) so that "work performed by women which is equivalent in value to that

performed by men in the same establishment should be paid the same." (p.1). We would agree with this objective. The Government, however, appears to back away from this general principle. Instead of job content as the primary focus for comparison, the focus is on gender predominance. Instead of a basic labour standard accessible to individuals and groups alike, pay equity is held out as a remedy available only in limited circumstances to limited types of occupations.

The Advisory Council fears that the methods of implementing pay equity as suggested by the Green Paper will undermine the general principle. Helen Remick, a noted American authority, warns that

> policies purporting to mandate comparable worth can be gutted by seemingly neutral technical decisions.[2]

Pay equity can be rendered meaningless if definitions are narrow, coverage restricted, bases for comparison limited, enforcement strategies out-moded, or resources for implementation and enforcement in short supply. The Interpretation Act of Ontario provides that

> every Act shall be deemed to be remedial...and shall accordingly receive such fair, large and liberal construction as will best ensure the attainment of the object of the Act according to its true intent.[3]

The same principle should apply to the development of the equal pay policy.

There is a further concern that the dual approach to pay equity undertaken by the Government, one bill for the public sector now, and another at some later unspecified date for the rest of the economy, is fundamentally misconceived. The Advisory Council regards equal pay for work of equal value as a basic labour standard applicable to all employees. All sectors will have their unique problems with implementation. All sectors should be required to "put their house in order" as soon as possible. Two separate bills merely codify inequality in access to the basic standard and creates an unjustifiable "pay equity holiday" for the bulk of employers at the expense of the women of Ontario. We urge the Government to bring forward comprehensive pay equity legislation immediately. The time for consultation is past.

RECOMMENDATION #1

A) THE GOVERNMENT SHOULD TABLE COMPREHENSIVE DRAFT LEGISLATION IMMEDIATELY, ONE BILL FOR ALL SECTORS OF THE ECONOMY.

B) THE LEGISLATION SHOULD REGARD PAY EQUITY AS A BASIC LABOUR STANDARD, EQUALLY ACCESSIBLE TO INDIVIDUALS AND GROUPS.

C) THE DRAFT LEGISLATION SHOULD ENSURE THAT METHODS OF IMPLEMENTATION ARE BROADLY DEFINED SO THAT EQUAL PAY FOR WORK OF EQUAL VALUE IS ACHIEVED.

## COVERAGE

The Government Green Paper uses "coverage" to suggest various sectors to which pay equity could apply. Elsewhere in the Green Paper, however, are other assumptions which would limit coverage. It is proposed, for example, that pay equity would apply only to a) females, b) in female-predominated occupations, and c) where comparisons with male-predominated groups are available. Gender predominance guidelines are suggested with the possiblity of a "specified stabilization period" to ensure that the gender predominance reflects an historical pattern.

The Advisory Council is concerned that these assumptions and proposals are all restrictions which will seriously limit the extent of equal pay coverage. In our view, all limitations on coverage are contrary to the principle of equal pay for work of equal value as a basic labour standard. Comparisons should be made according to job content and should apply to everyone wherever pay inequity exists.

### a) Universal Coverage

The Advisory Council is adamant that pay equity should be applicable to all employers in all sectors equally. Thirty per cent of women in Ontario work for firms with fewer than 20 employees; 50% work for

firms with less than 100 employees.[4] There is no justification for excluding smaller employers nor for permitting these employers to delay implementation merely because of the size of their labour force. As a basic labour standard, pay equity should be equally available to part-time employees, trainees, students, rehabilitation positions, casual and contract employees, and to workers who do piecework. The focus must be on the nature of the job, and not on the characteristics of the incumbent.

b) Gender Predominance

The Advisory Council and all those who participated in its consultation process universally condemn the concept of gender predominance guidelines. Such guidelines have no relationship to the basic principles of equal pay for work of equal value, nor to the realities of the Ontario workplace.

If enacted as proposed, they will become thresholds for eligibility that will exclude thousands from coverage under the pay equity law. The concept of gender predominance is inherently restrictive. Individual complainants would be excluded from relief, as would one woman versus several men, and several women versus one man. Women within the same occupation as men would automatically be excluded, notwithstanding the fact that women consistently earn significantly less than their male colleagues.[5] Job evaluations and comparisons

within these groups would indicate that some percentage of the wage gap is due to undervaluation of "women's work" within these professions. The proposed formula would exclude the bulk of occupations employing women. Statistics Canada data indicate that only 2 of 23 occupations listed (health and clerical workers) employ more than 60% women; 13 occupations employ 20-60% females, and 8 employ 19% or less. Based on this data, women in the social services, services occupations, sales, arts and recreation, among others, would not qualify.[6] Teachers generally are close to 60% female, but secondary school teachers only 43.5% females.[7]

We challenge the Government to show how many Ontario establishments actually have labour pools that satisfy the proposed formula. How many traditional "pink ghetto" occupations will be excluded for lack of sufficiently large comparison groups? We fear that numerous groups which historically have been subject to pay inequality will not qualify for relief. We also note that, had such guidelines then applied in the federal sector, the most effective settlements achieved by the Canadian Human Rights Commission on behalf of library workers, and on behalf of general, food and laundry workers might have been excluded.[8]

It has been suggested that such guidelines are necessary to avoid the "quicksand of case-by-case assessments".[9] On the contrary, individual cases can trigger a generalized investigation that can

bring a remedy to many employees. Such cases provide a "window" on a sector or an establishment, and ensure that pay equity is accessible to all.

Gender predominance guidelines are an invitation to abuse. Employers may manipulate their employee pools to avoid eligibility. Hiring and firing decisions will be made with a view to their effect on eligibility for pay equity. Such guidelines could readily undermine affirmative action and other employment equity initiatives.

The administration of such guidelines is also rife with problems. At what point in time are the guidelines to apply? Who is to be included? How to accommodate changes in numbers? Women workers may feel arbitrarily deprived if their right to higher wages is dependent not on the existence of pay inequity but on the size of gender-predominant labour pools. Employers too may feel unjustly treated if competitors are not subject to a comparable duty to pay. All these concerns are unnecessary complications which have nothing to with pay equity.

c) No Male Comparison Group

The Government Green Paper emphasizes that pay equity cannot apply where there is no male comparison group. If so, it is clear that much of the wage gap due to occupational segregation will remain

unaffected. The pay inequity prevalent in such "pink ghetto" professions as nursing and childcare will be perpetuated.

Childcare staff are 99% women, most with community college or university training.[10] They perform an essential service in contemporary society. The average annual income for childcare staff in 1983 was $13,000 compared to $21,000 to $22,400 for bookkeepers and farmhands. Average wages are 72% less than teaching graduates with no experience, 30% less than for the wages of general labourers and workers who care for animals. Clearly, childcare workers are one group who should be targeted to benefit from pay equity legislation.

The structure and organization of childcare in Ontario, however, will preclude much of this sector from coverage. Childcare workers at municipal centres presumably will be able to compare their salaries to male workers doing dissimilar work. Childcare workers in centres located in or managed by community colleges, hospitals, YMCA's etc. may or may not have a comparable group. Not-for-profit, parent cooperatives and commercial centres with no relationship to other programs or services almost certainly will not.

Two approaches may help address this issue. The first is the broadest possible definition of "establishment" (see page 11). The second is the concept of proportional value. Proportional value

allows for proportionate comparisons between jobs which may not be equal in value. A female job, for example, with a point value of 50 may be compared with a male job having a point value of 75. In these circumstances, pay equity should require that the female job be paid at least 2/3 that of the male job.[11] The concept of proportional value is widely endorsed by labour and women's groups who understand that, without it, pay equity will have limited impact. To be effective, however, proportional value must be defined in the legislation.

d) "Equal Value" as an Amendment to the Employment Standards Act

If the Government insists that new equal pay legislation cannot include individual situations or comparisons in "mixed occupations", alternatives must be considered for the thousands who would be excluded from coverage. A residual solution offering some equity would be to amend the existing "equal pay" provision of the Employment Standards Act to include "work of equal value" and specific reference to the composite test to determine value.[12] Such an amendment would render equal pay for work of equal value as a minimum employment standard in all employment contracts. Individual complainants would not be arbitrarily deprived of their right to pay equity. Traditional "equal pay" cases, now sometimes terminated when "equal value" is seen to be the real issue, would reach a conclusion.

RECOMMENDATION #2

A) PAY EQUITY SHOULD APPLY TO ALL SECTORS AND TO EVERYONE ACCORDING TO JOB CONTENT.

B) THERE SHOULD BE NO EXCLUSIONS OR DELAYS FOR SMALL EMPLOYERS. PART-TIME WORKERS, TRAINEES, STUDENTS, REHABILITATION POSITIONS, CASUAL AND CONTRACT WORKERS, AND WORKERS WHO DO PIECEWORK SHOULD ALL BE COVERED.

C) THERE SHOULD BE NO GENDER PREDOMINANCE GUIDELINES.

D) LEGISLATION SHOULD INCLUDE RECOGNITION OF PAY EQUITY COMPARISONS BASED ON PROPORTIONAL VALUE.

E) IF GENDER PREDOMINANCE RESTRICTIONS ARE RETAINED (WHICH WE OPPOSE), S.33 OF THE EMPLOYMENT STANDARDS ACT SHOULD BE AMENDED TO INCLUDE EQUAL PAY FOR WORK FOR EQUAL VALUE AND THE COMPOSITE TEST AS DEFINED BY S.4 OF BILL 105.

## DEFINITIONS

Certain key definitions will also affect the scope and effect of the pay equity law. The Advisory Council is strongly of the view that the guiding principle should be the broadest possible coverage to ensure that wage discrimination can be addressed wherever it occurs.

### a) "Establishment"

The definition of "establishment" defines the area of comparison and is thus crucial to the scope of pay equity. Geographic definitions are recognized to be unduly restrictive.[13] Functional definitions based on "common personnel and compensation policies" are equally limited. Such an approach would prohibit comparisons between bargaining units, between organized and unorganized workers, between

part-time and full-time workers. Those very groups who should benefit from pay equity will be excluded because they are subject to different personnel and compensation policies. A functional definition also invites restructuring to avoid the law.

We suggest that the definition of "establishment" offer the broadest possible scope for comparison. A corporate definition which extends to "associated and related companies", franchises, and includes unincorporated employers, offers the best alternative. To avoid efforts to circumvent the legislation, "successor" companies[14] and companies given contracts for parcels of work originally done within the unit,[15] should also be subject to the same pay equity obligations.

In exceptional situations, there needs to be supplementary provisions. The broader public sector offers particular problems, requiring particular responses. The childcare sector as described above requires special attention. Several possible approaches include:

* treating all the broader public sector as one establishment;[16]
* treating each service within the broader public sector (e.g. hospitals, municipalities, school boards, colleges, universities, children's aid societies) as one establishment;[17]
* defining "establishment" to coincide with the province-wide bargaining unit;[18]
* including within the establishment all organizations and agencies operating on purchase of service agreements;[19]
* allowing selected comparisons between establishments.[20]

Certain problems still remain and must be addressed. How to achieve pay equity in small towns and rural communities such as Huron County where "small business is the major employer and many women will not have male co-workers to be compared to"?[21] Proportional value may be of assistance. Or the implementation of contract compliance to bring within a scope for comparison those who supply goods and services to the public service and the broader public service. It is clear, however, that without such responses, pay equity will remain an illusion for the women of Huron County and thousands of others similarly situated.

b) Determination of "Value" Based on Job Content

We agree that pay equity legislation should not codify the methodology of job evaluation but only establish the minimum standards that must apply. Experience elsewhere indicates, however, that job evaluation practices and procedures require careful scrutiny to ensure unbiased application.[22] It is imperative, therefore, that the minimum statutory standards be as comprehensive as possible. These should include:

* the mandatory development of a job evaluation system within each establishment that includes all class or job specifications and covers all bargaining units, so that every job can be compared one to the other;[23]

* joint employer-employee participation in the development and application of the job evaluation system;[24]

* gender-neutral in design and application;

* bias-free determination of factors and weighting;

* consistent and reliable application;
* a process of validation.

Where existing job evaluation systems meet the criteria, they could be used. Where no such systems exist, or where existing systems demonstrate bias, standardized pre-packaged systems can be adapted to the particular situation. The enforcement agency, like the Manitoba Pay Equity Bureau, should have the expertise and mandate to assist in developing appropriate job evaluation schemes.

"Equal value" should not mean "identical value", but "a band of equal value" whereby points within a range are considered equal for the purpose of pay equity. Disputes between employers, employees and/or the enforcement agency as to the "value" to be attributed to particular factors should be subject to arbitration or decision by an independent tribunal[25].

c) "Pay"

The objective of pay equity requires a "total compensation" approach. This is consistent with precedents at the federal level and in Manitoba. It recognizes the extent to which non-wage benefits make up an increasing proportion of employee compensation. It avoids any possibility of using fringe benefits to circumvent the legislation.

RECOMMENDATION #3

A) DEFINITIONS IN PAY EQUITY LEGISLATION SHOULD ENSURE THE BROADEST POSSIBLE COVERAGE.

B) "ESTABLISHMENT" SHOULD BE BASED ON A CORPORATE DEFINITION AND EXTEND TO ASSOCIATED AND RELATED COMPANIES, FRANCHISES, SUCCESSSOR COMPANIES, AND COMPANIES DOING WORK "CONTRACTED OUT". UNINCORPORATED EMPLOYERS SHOULD BE TREATED AS A CORPORATION FOR PAY EQUITY PURPOSES.

C) "ESTABLISHMENT" SHOULD BE DEFINED TO ALLOW FOR THE BROADEST POSSIBLE APPLICATION IN PROBLEM SECTORS, E.G. THE BROADER PUBLIC SECTOR, PROVINCE-WIDE BARGAINING UNITS, COMMUNITIES CHARACTERIZED BY SMALL BUSINESS WITH FEW EMPLOYEES, CHILDCARE SECTOR.

D) JOB EVALUATION SYSTEMS SHOULD BE SUBJECT TO COMPREHENSIVE MINIMUM STATUTORY STANDARDS, INCLUDING:

1) A MANDATORY SCHEME COVERING ALL JOBS AND ALL BARGAINING UNITS;

2) MANDATORY EMPLOYER-EMPLOYEE PARTICIPATION;

3) GENDER-NEUTRAL DESIGN AND APPLICATION;

4) BIAS-FREE FACTORS AND WEIGHTING;

5) CONSISTENT APPLICATION;

6) A PROCESS OF VALIDATION.

E) "EQUAL VALUE" SHOULD MEAN "A BAND OF EQUAL VALUE" WITH ANY DISPUTES SUBJECT TO ARBITRATION OR RESOLUTION BY AN INDEPENDENT TRIBUNAL.

F) "EQUAL PAY" SHOULD BE BASED ON TOTAL COMPENSATION, INCLUDING ALL BENEFITS.

## EXCEPTIONS

"Allowable exceptions", like the bona fide occupational requirement test in human rights legislation[26], have the potential to undercut the protection ostensibly offered by a pay equity policy. Since the

objective of the policy is to attack only pay inequities arising from discrimination, explicit reference to pay inequities due to other factors is superfluous. Certain exceptions (e.g. performance rating systems, training assignments, market shortages) may perpetuate existing discriminatory practices. Explicit reference to exceptions may encourage employers to re-structure to avoid the application of the law. It may mislead employees into assuming that pay equity does not apply in these situations and so deter complaints. The enforcement agency may focus on the exception, disregarding the circumstances of the particular case.

There is a strong body of support (particularly in the unionized sector) in favour of retaining seniority as the only exception. The Advisory Council is of the opinion, however, that seniority for the purposes of selection, lay-off, recall, etc. should be distinguished from seniority for pay purposes. In our view, exceptions should be narrowly construed, based on the facts of each individual case. For this reason, no exceptions should be codified as "allowable exceptions" to the general rule.

RECOMMENDATION #4

**PAY EQUITY LEGISLATION SHOULD NOT CODIFY ANY "ALLOWABLE EXCEPTIONS."**

## PAY ADJUSTMENTS

Where pay inequity is identified, it is hoped that most adjustments will be achieved by agreement. Pay equity legislation, therefore, should leave maximum scope to the parties and the enforcement agency, to negotiate a pay adjustment settlement according to the particular situation.

The legislation should set forth basic standards only. These should include:

* a prohibition against the lowering of wages to achieve pay equity;
* an acknowledgement that adjustments based on "indirect comparisons"[27] or "comparable worth lines"[28] are initial adjustments only;
* provision for initial adjustments by a variety of techniques including: across-the-board percentage increases, equalization of base entry rates, bottom-end-loading wage increases, the elimination of rug-ranking, a uniform expression of wage rates, reducing steps within job classifications;[29]
* mandatory specific dates for initial adjustments;
* recognition that initial adjustments are interim only, to reduce some of the disparity between wages;
* recognition that actual pay equity requires comprehensive job evaluation and a specific plan to eliminate all differences in pay between jobs of equal value within a specific period of time.

To facilitate fiscal planning, the legislation should also provide that all employers set aside a contribution based on a percentage of total payroll into a mandatory Pay Equity Savings Fund from which adjustments would be made.[30] These contributions would themselves generate additional funds with which to finance the costs of back-pay

and catch-up adjustments. Such a Fund would ensure that pay equity adjustments are not diverted from normal pay increments, and not used to compensate one group of employees at the expense of others.

The Green Paper is emphatic that there be no retroactive payment prior to proclamation of the new legislation. The Green Paper is less clear, however, on the extent of back pay that will be allowed after the pay equity law goes into effect. Experience elsewhere suggests that back payments can be substantial. The Advisory Council's position is that liability for back-pay awards should kick in on the date when employers have the legal duty of full implementation. There should be no other statutory limitations on back-pay awards.

RECOMMENDATION #5

A) PAY EQUITY LEGISLATION SHOULD AS A GENERAL PRINCIPLE LEAVE METHODS OF PAY ADJUSTMENT TO NEGOTIATION.

B) THE PAY EQUITY LAW SHOULD INCLUDE:

1) A PROHIBITION AGAINST LOWERING WAGES;

2) PROVISION FOR INTERIM INITIAL ADJUSTMENTS;

3) MANDATORY SPECIFIC DATES FOR INITIAL ADJUSTMENTS;

4) PROVISION FOR SPECIFIC PLANS TO MONITOR ONGOING DISCREPANCIES AND TO ELIMINATE THE DIFFERENCE WITHIN A SPECIFIC PERIOD OF TIME;

5) A MANDATORY CONTRIBUTION BY EMPLOYERS TO A PAY EQUITY SAVINGS FUND FOR PAY EQUITY ADJUSTMENTS.

C) THERE SHOULD BE NO LIMIT ON BACK-PAY AWARDS AFTER FULL IMPLEMENTATION IS REQUIRED.

## UNIVERSAL MANDATORY IMPLEMENTATION

We are concerned that the Green Paper's discussion of models for implementation is misconceived. A "complaint-based model", for example, is a model for enforcement not for implementation. Previous experience indicates that voluntary "employer-initiated" programmes will not be effective.[31] Contract compliance is not an interim implementation strategy, but an ongoing enforcement mechanism. Implementation itself is not an interim process. Implementation is an ongoing monitoring process which continues even after awards have been made or settlement reached.[32]

The Advisory Council is strongly of the view that legislation should specify a universal mandatory implementation scheme which builds on existing relationships and which provides time limits for full implementation. A mandatory pay equity plan should be required for each establishment, covering all workers, crossing bargaining units, and including unorganized employees. Such plans should identify the job evaluation scheme, the jobs for which pay equity payments are required, and the adjustments to be made. The legislation should provide for employer-employee participation in the development of pay equity plans. All plans should be filed with the enforcing agency.

The Advisory Council proposes that the Manitoba Pay Equity Act[33] provides a good model for implementation of pay equity in the unionized sector in Ontario. Legislation should impose a duty on all parties to all collective agreements to negotiate pay equity plans in good faith. Because these plans would cross bargaining units, and involve unorganized workers as well, the plans should be negotiated separately from the normal collective bargaining process. The law should define a specific date for agreement on the development or selection of a job evaluation system, and a specific date for agreement on the allocation of necessary wage adjustments. All agreements should be subject to review and spot checks by the enforcing agency. Where there is no agreement, the impasse should be referred to tripartite arbitration.

Complementary changes, in the pay equity legislation itself or in the Labour Relations Act, need to build on existing experience.[34] These should include:

* a provision for pay equity as a deemed term of all collective agreements;[35]
* a duty on both employer and bargaining agent to bargain pay equity plans in good faith;
* a prohibition against bargaining away pay equity adjustments;
* a right to complain re unfair representation in pay equity negotiations;[36]
* protection for workers against reprisals for negotiating or enforcing pay equity plans.[37]

Where the establishment is not unionized or where specific job classifications are not unionized, a duty should be placed on the employer to include representation from non-unionized workers in the development of the pay equity plan. We note that in Manitoba, Regulations establish procedures for the election of employee representatives from those who are not unionized.[38] We commend this approach. Again a specific date must be legislated by which job evaluation documentation must be in place. Another specific date should define when pay adjustments must be made. Pay equity plans should be filed with the enforcing agency. Any differences should be referred to an independent tribunal.

Legislation should also make express provision for full disclosure of information re job or class specifications, compensation schedules, and pay equity plans.[39] As with the unionized sector, there needs to be statutory protection against reprisals.

Implementation will require significant public education initiatives by the administrative enforcement agency. To clarify this mandate, specific powers should be enacted authorizing the agency among other things, to share information and advice respecting implementation, prepare statistics, undertake research, conduct education and informational programs, prepare and circulate pamphlets and other information materials. It should also be a duty of the agency to submit to the Legislature an annual report on the progress of implementing pay equity. Again, the Manitoba Pay Equity Act provides a good model.

RECOMMENDATION #6

A) PAY EQUITY LEGISLATION SHOULD PROVIDE FOR UNIVERSAL MANDATORY IMPLEMENTATION THROUGH THE DEVELOPMENT OF A MANDATORY PAY EQUITY PLAN WITHIN EACH ESTABLISHMENT INCLUDING SPECIFIC DATES FOR COMPLETION OF JOB EVALUATION SCHEMES AND SPECIFIC DATES FOR IMPLEMENTATION OF PAY ADJUSTMENTS. ALL PLANS SHOULD BE FILED WITH THE ENFORCING AGENCY.

B) LEGISLATION SHOULD PROVIDE FOR EMPLOYEE PARTICIPATION IN THE DEVELOPMENT OF PAY EQUITY PLANS.

C) IN THE ORGANIZED SECTOR, COLLATERAL AMENDMENTS TO THE PAY EQUITY LAW OR THE LABOUR RELATIONS ACT SHOULD INCLUDE:

1) A PROVISION THAT EQUAL PAY FOR WORK OF EQUAL VALUE IS AN IMPLIED TERM IN ALL COLLECTIVE AGREEMENTS;

2) A DUTY TO BARGAIN PAY EQUITY IN GOOD FAITH;

3) A PROHIBITION AGAINST BARGAINING AWAY PAY EQUITY ADJUSTMENTS;

4) THE RIGHT TO COMPLAIN AGAINST UNFAIR REPRESENTATION IN PAY EQUITY NEGOTIATIONS;

5) PROTECTION AGAINST REPRISALS FOR NEGOTIATING OR ENFORCING PAY EQUITY PLANS.

D) IN NON-UNIONIZED SITUATIONS, THERE SHOULD BE A DUTY ON EMPLOYERS TO INCLUDE EMPLOYEE REPRESENTATIVES IN DEVELOPING THE PLAN. REGULATIONS SHOULD DEFINE HOW REPRESENTATIVES SHOULD BE CHOSEN.

E) LEGISLATION SHOULD ALSO PROVIDE FOR:

1) FULL DISCLOSURE OF INFORMATION RE JOBS, COMPENSATION AND PAY EQUITY PLANS;

2) PROTECTION AGAINST REPRISALS;

3) REFERRAL OF DISPUTES TO TRIPARTITE ARBITRATION OR TO AN INDEPENDENT TRIBUNAL.

F) THE PUBLIC EDUCATION MANDATE OF THE ADMINISTRATIVE AGENCY SHOULD BE DEFINED BY STATUTE INCLUDING THE PROVISION OF ADVICE AND ASSISTANCE, DATA COLLECTION, RESEARCH, PUBLIC EDUCATION, PUBLICATION, AND A MANDATORY ANNUAL REPORT TO THE LEGISLATURE.

## COMPREHENSIVE ENFORCEMENT MECHANISMS

Experience with human rights legislation in Canada has clearly demonstrated that relying on individual complaints reflects an outmoded view of the nature of discrimination and undermines effective protection.[40] An individual complaint model precludes the enforcement agency from gaining control over its own resources. Priorities cannot be allocated according to greatest need. Lack of complaints may lead to the mistaken conclusion that no problem exists. If more serious violators are not subject to scrutiny, individual employers against whom a complaint is pursued may see themselves as unfairly treated.[41]

The Advisory Council's position is that pay equity legislation should provide for comprehensive enforcement mechanisms so that a "systemic approach to enforcement"[42] can be developed. "A systemic approach to enforcement" is primarily concerned with groups, looks at effects not intent, is preventive and proactive.[43] The primary objective of a systemic approach is not to remedy past harms, but to change ongoing practices and policies to end future discrimination. Utilizing a systemic perspective, the enforcement agency defines its own agenda, by routine monitoring of implementation, and selective enforcement where the impact of intervention will be greatest.

To do this, the pay equity law should include:

* an administrative agency with research, education, consultation, publication, investigation and settlement powers;

* mandatory filing of pay equity plans with the agency;[44]

* plans subject to public scrutiny;[45]

* routine monitoring of pay equity plans by the agency (including routine audits of selected sectors);

* unlimited right to lay complaints by individuals, groups, third parties, and the agency itself;

* broad powers in the agency to conduct investigations, including the power to require the production of documentation, enter premises, contract with independent consultants and experts, subpoena witnesses;

* speedy recourse to a hearing before a tripartite arbitration board (unionized sector) or an independent tribunal re complaints or disputes in developing and administering pay equity plans;

* publication of settlements and arbitration/tribunal decisions;

* powers in the arbitration board and/or the independent tribunal to impose pay equity plans, back-pay awards and whatever other systemic remedies are necessary to ensure compliance;

* effective machinery to enforce settlements and tribunal decisions (e.g. reporting requirements, decisions filed with a court become orders of the court for the purposes of enforcement, review powers in tribunal);

* penalties for failure to file plans, pay adjustments, or for non-compliance with a settlement or arbitration/tribunal decision.[46]

A comprehensive enforcement strategy should also include contract compliance. Government purchasing power has proven to be an effective incentive for changing discriminatory practices in the United States.[47] Employers who wish to contract with the Government and all agencies or bodies in the broader public sector which receive

public funds, should be required to show that job evaluation schemes and plans for implementing equal pay are in place. As all employers would be under a similar duty, those who seek Government contracts or funds would be at no disadvantage. Contract compliance, however, would provide a double check, ensuring enforcement within this very large and significant sector.

RECOMMENDATION #7

PAY EQUITY LEGISLATION SHOULD PROVIDE FOR COMPREHENSIVE ENFORCEMENT MECHANISMS INCLUDING:

A) THE POWERS NECESSARY FOR A SYSTEMIC APPROACH TO ENFORCEMENT (AS DEFINED ON PAGE 23);

B) CONTRACT COMPLIANCE.

## THE AGENCY AND TRIBUNAL

The nature and quality of the enforcement agency will make or break any pay equity legislation. "A systemic approach to enforcement" requires specialized expertise, adequate resources, and the capacity for consultation, education, reviewing documentation, conducting routine audits, investigation, negotiation, litigation and monitoring results.

The Advisory Council is of the opinion that the Ontario Human Rights Commission already has a very broad mandate. Experience indicates that the effectiveness of an agency can be undermined if its span of

responsibilities is too large.[48] We suggest that the present work of the Commission should not be further diluted. We also note that the Commission's lack of expertise in dealing with equal pay complaints was a major reason for transferring that standard to the Employment Standards Branch in 1969.[49]

Experience with equal value cases at the federal level and in Quebec indicates that many "equal value" cases could have arisen under existing equal pay laws.[50] The Employment Standards Branch has had sixteen years of experience with equal pay investigations and has developed the capacity to analyze jobs, assess records, respond to individual complaints, and conduct routine audits. The Branch, however, is already grossly over-extended. It lacks the staff and resources necessary for a systemic approach to enforcement.

The Advisory Council's position is that pay equity should be universal, mandatory, and subject to comprehensive enforcement mechanisms. No existing agency has the capacity to develop, implement or monitor such a policy. The Advisory Council supports the creation of a new body, as has occured in Manitoba. The Advisory Council recommends, however, that the body be re-structured as an Employment Equity Commission. This ensures that all "employment equity"[51] issues are dealt with by one body, and that pay equity is not fragmented from other initiatives with similar and complementary objectives. Such Commission should have independent resources, experienced staff, and the capacity to offer decentralized services across the Province.

In addition, there will need to be the creation of a new independent tribunal with the power and expertise to conduct hearings in pay equity disputes. In the unionized sector, disputes between union and employer could be referred to tripartite arbitration. In the non-unionized sector, or where pay equity plans include unorganized workers, another disputes-resolution mechanism is required.

An independent tribunal is essential for several reasons.[52] It ensures a fair hearing without any apprehension of bias. The primary role of the Commission is education, administration and enforcement. It cannot investigate, initiate complaints, and then sit in judgement on its own cases. An independent Tribunal clearly separates the roles, and frees the Commission to pursue vigorously its systemic proactive initiatives. A permanent tribunal allows for the development of expertise and ensures that the appointment of a tribunal (especially in cases having broad impact) is not dependent on extraneous administrative or political considerations. It also provides a mechanism for ongoing enforcement of decisions. The tribunal should include employers and employees, men and women, representative of groups affected by the pay equity law.

RECOMMENDATION #8

A) PAY EQUITY SHOULD BE ADMINISTERED BY A NEW EMPLOYMENT EQUITY COMMISSION WITH RESPONSIBILITY FOR ALL EMPLOYMENT EQUITY ISSUES.

B) AN INDEPENDENT TRIBUNAL SHOULD BE CREATED TO ADJUDICATE PAY EQUITY DISPUTES.

## COMPREHENSIVE EMPLOYMENT EQUITY LEGISLATION

The Green Paper reiterates that pay equity is only "one component of employment equity"[53] and that

> pay equity will not address issues such as access to non-traditional jobs, the need for increased education, training and retraining programs, the promotion of women into senior ranks, and adequate and affordable childcare.[54]

There is wide consensus that pay equity is only one part of the total package.[55]

The Advisory Council is very concerned that even a broadly-defined pay equity policy has the potential to affect only 20% of the existing wage gap. A narrowly defined pay equity policy will affect it significantly less. We fear that a focus solely on pay equity will detract from other equally important programs and policies which are essential to eliminate the wage gap and achieve equality of opportunity in employment.

The Advisory Council's position is that comprehensive employment equity legislation is necessary to address these issues in a co-ordinated fashion. A pay equity policy as we have defined it should be extended and combined with:

* mandatory affirmative action legislation for women, the handicapped and visible minorities with the same implementation and enforcement strategies discussed previously;

* a review of the existing Employment Standards Act to update minimum standards and determine how existing coverage adversely affects the wage gap (e.g. limited overtime provisions, higher minimum wage, restricted exemptions);

* a review of the legal status of domestic workers, pieceworkers (including those in agriculture and in the needle trades) and independent contractors;

* a comprehensive childcare policy to upgrade the status of childcare workers and provide universally accessible childcare to all workers;

* expanded education and job training opportunities for women entering the workforce;

* ongoing review of school programs, curriculum and materials to eradicate discriminatory stereotyping and to avoid streaming into job ghettos;

* review of pension schemes and benefit plans as they affect part-time workers, contract workers, and homemakers caring for dependents (children, the elderly, and disabled);

* initiatives to encourage greater unionization among women workers.

The Advisory Council is convinced that an Employment Equity Commission with powers as we have suggested and with a mandate to implement and monitor a comprehensive employment equity strategy would have significant impact on the wage gap and on employment equity in Ontario. Anything else is likely to be piecemeal, with little likelihood of success. The choice is clear.

RECOMMENDATION #9

PAY EQUITY BE INCLUDED IN A COMPREHENSIVE EMPLOYMENT EQUITY POLICY INCLUDING LEGISLATION FOR AFFIRMATIVE ACTION, UPGRADED EMPLOYMENT STANDARDS, A REVIEW OF THE LEGAL STATUS OF DOMESTIC WORKERS, PIECEWORKERS AND INDEPENDENT CONTRACTORS, UNIVERSALLY ACCESSIBLE CHILDCARE, EXTENDED EDUCATION AND JOB TRAINING OPPORTUNITIES, REDUCED STEREOTYPING AND STREAMING IN SCHOOLS, EXPANDED PENSIONS AND OTHER BENEFITS FOR PART-TIME WORKERS, CONTRACT WORKERS AND HOMEMAKERS CARING FOR DEPENDENTS, GREATER UNIONIZATION AMONG WOMEN WORKERS.

## ENDNOTES - PART A

1. I.L.O. Convention 100 on Equal Remuneration for Work of Equal Value (1951); U.N. Convention on the Elimination of All Forms of Discrimination against Women (1979); Canadian Human Rights Act 5.11 (1978); Quebec Charter of Human Rights and Freedoms 5.19 (1977); Manitoba Pay Equity Act (1985). Alaska, Arkansas, California, Georgia, Idaho, Iowa, Kentucky, Maine, Maryland, Massachussets, Minnesota, North Dakota, Oklahoma, Oregon, South Dakota, Tennessee, West Virginia. Council of the European Communities Equal Pay Directive (1975). Great Britain Equal Pay Act (1984); France (1972); Australia (1975); New Zealand (1977).

2. Helen Remick ed. Comparable Worth and Wage Discrimination, Temple University Press, Philadelphia, 1984, p.xi. Also Ronnie Steinberg Ratner in her article "Identifying Wage Discrimination and Implementing Pay Equity Adjustments" p.100 notes, that, whereas formerly the U.S. debate focused on whether or not there would be a comparable worth policy, now the debate hinges on the technical issues of implementation (e.g. scope, standards of worth, strategies and procedures for adjustment).

3. Revised Statutes of Ontario, 1980. c. 219, s.10.

4. Ontario Green Paper on Pay Equity, November 1985. p.65.

5. Statistics Canada, Catalogue Number 92-930 from 1981 Census from James F. Hickling, Management Consultants Brief, March 7, 1986, p.6.

6. Statistics Canada, 1981 Census, Labour Force - Occupation Trends, Catalogue No. 92-920 quoted in Judge Rosalie Silberman Abella, Equality in Employment. A Royal Commission Report, October 1984, p. 63 from James F. Hickling Management Consultants Brief, March 7, 1986, p.8.

7. Statistics Canada Cat. No. 92-930, Table 4 from James F. Hickling Management Consultants Brief, March 7, 1986, p.7.

8. The 3000 general, food and laundry services workers were 60%, 52% and 59% female. The library science workers were 65% female. O.F.L. Brief in Response to the Green Paper on Pay Equity, February 1986, p.8.

9. Canadian Human Rights Commission, Background notes on proposed guideline - equal pay for work of equal value, March 1985, p.5.

10. Statistics taken from Ontario Coalition for Better Daycare Brief to Consultation Panel on Pay Equity, March 1986, p.2-3.

11. The example is taken from the Ontario Nurses' Association Submission to the Consultation Panel on Pay Equity, March 1986, p.19. The concept has also been recommended by the New Brunswick Advisory Council on the Status of Women, "Equal Pay for Work of Equal Value" (March 1985), p. 11-12.

12. As defined in Bill 105, s.4

13. Canadian Human Rights Commission, footnote no. 9. p.11.

14. C.f. Labour Relations Act R.S.O. 1980, c.288, s.62, 63.

15. Contracting-out (of "women's work", or of male comparison groups) is widely seen as an obvious means by which employers can circumvent the legislation.

16. A broad definition of "establishment" is particularly important for traditionally female occupations such as nursing. Wide discrepancies exist between wages paid to nurses in hospitals, public health units and nursing homes. These settings suffer particularly from lack of a male comparison group. Submission to the Consultation Panel on Pay Equity from Ontario Nurses' Association, March 1986, p.15-18.

17. Presentation of Ontario Physiotheraphy Association to March 7, 1986 Forum, p. 4. Response to the Government Green Paper from the Metropolitan Toronto District Council of the Canadian Union of Public Employees, March 27, 1986, p.4.

18. CUPE's Ontario Council of Hospital Unions, for example, bargains centrally with 73 Ontario hospitals. This ensures, among other things, one negotiated rate of pay for Registered Nursing Assistants across the province. The pay equity legislation should recognize and build on these existing relationships. Metropolitan Toronto District Council of CUPE Response, March 27, 1986, p.4.

19. Purchase of service agreements, including municipal and provincial subsidies to non-governmental agencies, would bring into a pool of comparison many organizations and agencies that themselves lack male comparison groups. Metropolitan Toronto District Council of CUPE Response, March 27, 1986, p.6.

20. Suggestion of the Ontario Coalition for Better Daycare, footnote no. 10.

21. Brief to Advisory Council by Women Today, March 1986, p.2-3.

22. Richard Beatty and James Beatty "Some Problems with Contemporary Job Evaluation Systems" p.59-78. Donald Treiman "Effect of Choice of Factors and Factor Weights in Job Evaluation" p.78-89; Helen Remick "Major Issues in a priori Application" p.99-117 in Remick, footnote no.2; Manitoba Pay Equity Bureau, Pay Equity and Job Evaluation, February 4, 1986.

23. This is an essential feature of the Manitoba Pay Equity Act, S.M. 1985, c.21, and is considered "the operational definition" of comparable worth by Helen Remick, footnote no. 2, p.22, 100.

24. Treiman, Remick in Remick footnote no. 22; Manitoba Pay Equity Bureau, Pay Equity and Job Evaluation, February 4, 1986.

25. A procedure for the resolution of differences in evaluations made by the parties is recognized as a need by John S. Campbell, "Equal Pay for Work of Equal Value in the Federal Public Service of Canada" Compensation Review vol. 15, no.3 (1983) p.48.

26. Mary Jane Mossman and Julie Ramona Jai, "Women and Work and the Canadian Human Rights Act" in Ceta Ramkhalawansingh, ed., (UN)Equal Pay: Canadian and International Perspectives, Toronto: Resources for Feminist Research, Fall 1979, p.2-4.

27. Canadian Human Rights Commission, footnote no. 9, p.7-10. The practice of the C.H.R.C. on wage adjustments is to raise the female group wages to an average level of male group wages.

28. Morley Gunderson, "Costing Equal Value Legislation in Ontario", A Report to the Ontario Ministry of Labour, p.3.15-3.18. A method of wage adjustment used on Washington State, based on the weighted average of the overvalued male and undervalued female jobs.

29. Abella, footnote no. 6, p.253; O.F.L. Brief, footnote no. 8, p.14-15.

30. The Washington State Budget Bill (EHB1079) signed June 15, 1983 established a special salary increase revolving fund. In Connecticut an "equity fund" was established, with yearly appropriations between 1 and 1.9% of payroll, to be used for pay adjustments when the job evaluation process is completed. Alice H. Cook, Comparable Worth: The Problem and States' Approaches to Pay Equity, University of Hawaii at Manoa, Industrial Relations Centre, February 1983, p.37.

31. Abella, footnote no.6, p.194-203.

32. Alberte Ledoyen, Quebec Human Rights Commission on "The Proceedings of A Forum on Equal Value" sponsored by the Ontario Status of Women Council, February 3-4, 1984, p.49.

33. Statutes of Manitoba 1985 c.21.

34. Some of these concerns were raised by Organized Working Women in their presentation on March 7, 1986, and in their brief to the Consultation Panel on Pay Equity, March 27, 1986.

35. C.f. Labour Relations Act R.S.O. 1980 c. 228 s. 41, 42, 44.; Bill 105, s. 10(2).

36. An extension of Labour Relations Acts. s.68.

37. Labour Relations Act, R.S.O. 1980, c.228, s.66, 67, 80.

38. The Pay Equity Act, S.M. 1985, c.21, s.1

39. The worker's right to information is an essential prerequisite to implementation and enforcement of pay equity. This is a particular problem for unorganized workers, those in small business or fragmented in different workplaces. As Women Today noted in March 1986, "Women have no idea whether they are being paid fairly, whether their colleagues are making similar wages or what range of pay they can expect to receive for their job. Many negotiate individually for their pay increases where an employer can use intimidation, manipulation and the secrecy surrounding wage scales to keep women underpaid for their work." Brief, footnote p.21, p.3.

40. William Black, Employment Equality: A Systems' Approach, Human Rights Research and Education Centre, University of Ottawa, November 1985, pp.21-87.

41. Ibid. p.41-49.

42. A term developed by Black, footnote no. 40.

43. Ibid, pp.134-141.

44. Filing is an essential tool for monitoring and enforcement. Such reporting is widespread and is generally accepted (e.g., tax reports, safety reports, environmental reports, collective agreements, pension plans, charitable corporations). Abella, footnote no. 6, pp.206-209; Black, footnote no. 40, pp.179-180.

45. Subject to certain limited exceptions, see Black ibid, p.181.

46. There is a widespread demand for criminal sanctions including substantial fines and imprisonment for violation of the Act. This reflects a general concern that the legislation must have teeth. Black argues, however, that criminal sanctions may undermine a systemic approach to enforcement. The problems include: evidentiary difficulties of proof, the effect of the Charter of Rights and Freedoms (including the requirement that a warrant be obtained to demand documents or other evidence), the reluctance of judges to convict and the limited penalties in summary proceedings. A more effective approach may be civil remedies, including back-pay awards with substantial interest and contempt proceedings. Black, ibid, pp.80-97, pp.235-236.

47. Abella, footnote no. 6, pp. 226-227.

48. Marion E. Lane, Administration in Action: An Institutional Analysis of the Ontario Employment Standards Branch. LL.M. Thesis, University of California at Berkeley 1977, pp. 13-18.

49. Morley Gunderson, "Male-Female Wage Differentials and the Impact of Equal Pay Legislation" The Review of Economics and Statistics (1974), p.464.

50. Ledoyen, footnote no 32; Gunderson, footnote no. 28, p.2.20.

51. Abella, footnote no.6, pp.1-10. The Advisory Council uses "employment equity" in the sense defined by Judge Abella, to refer to a range of policies and practices designed to achieve equality in employment including affirmative action, pay equity, education and training, and childcare.

52. Black, footnote no.40, pp.61-65.

53. Green Paper, p.1.

54. Green paper, pp. 14-15.

55. The Proceedings of A Forum on Pay Equity held by the Ontario Advisory Council on Women's Issues, Toronto, Ontario, March 7, 1986.

PART B

RESPONSE TO

BILL 105: PUBLIC SERVICE PAY EQUITY ACT, 1986

## BILL 105: AN INGENIOUS DISAPPOINTMENT

On February 11th 1986, the Minister of Labour tabled Bill 105, the Public Service Pay Equity Act 1986. For the first time, Government draft legislation to implement pay equity, for Government employees at least, is before the Legislature. We congratulate the Government on this initiative. We welcome the opportunity to see what the Government intends by pay equity, and to assess concrete details for proposed implementation.

Unfortunately, Bill 105 is an ingenious disappointment. Ingenious in the sense that it offers the potential for wage adjustments in the name of "pay equity" for large numbers of Ontario public servants at the least possible cost to the public purse. Ingenious also in that it perpetuates historical relationships between job classifications, and thereby seeks the support of the powerful public service unions. Ingenious also in that the basic approach to implementation, if not the language of the Bill nor the timetable for pay adjustments, is simplistic and relatively expeditious. As a first step to pay equity in the public service, Bill 105 may have some value. As the total Government approach, it falls far short of the "real thing".

The Advisory Council is strongly of the view that Bill 105 will not provide pay equity to women in the public service. The title of the Bill, its express purpose, its definition of pay equity, its

operation - all indicate the limited application of the Bill. We are concerned that the women of Ontario are not bought off by what can only be described as a pale facsimile of equal pay for work of equal value. The fundamental principles of Bill 105 are so flawed that we wish to put the Government on notice that Bill 105 itself should be treated only as an interim initial adjustment, subject to total pay equity adjustments when a comprehensive job evaluation analysis compares all jobs and all classifications within the public service and related agencies with each other. Alternatively we recommend that Bill 105 be redrafted or consideration given to its withdrawal.

RECOMMENDATION #1

A) BILL 105 SHOULD BE RECAST AS AN INTERIM INITIAL ADJUSTMENT SCHEME SUBJECT TO COMPLETE, ACCURATE PAY EQUITY ADJUSTMENTS AFTER A COMPREHENSIVE JOB EVALUATION SYSTEM HAS COMPARED ALL JOBS AND ALL CLASSIFICATIONS WITHIN THE PUBLIC SERVICE AND RELATED AGENCIES WITH EACH OTHER.

B) THE GOVERNMENT SHOULD INITIATE IMMEDIATELY THE DEVELOPMENT OF A COMPREHENSIVE JOB EVALUATION SYSTEM WITHIN THE PUBLIC SERVICE AND RELATED AGENCIES.

C) ALTERNATIVELY, BILL 105 SHOULD BE SENT BACK FOR SUBSTANTIAL REDRAFTING OR CONSIDERATION GIVEN TO WITHDRAWING THIS BILL.

## LANGUAGE AND FORMAT OF THE BILL

Despite its efforts to devise a scheme which can apply in a simplistic fashion, the Government has drafted a bill which is extraordinarily complex and convoluted. The average person has great difficulty understanding what is actually intended and how it works. There is reference in s.7, for example, to the development or selection of a job evaluation system and its application to "positions in the predominantly female and in the predominantly male group of jobs." This seems to indicate that all such groups of jobs will be compared. It is, however, misleading, for s.7(d) and s.5(1) indicate that pay equity and adjustments relate only to "the representative job level in a predominantly female group of jobs". Actual comparisons between other groups of jobs are irrelevant.

The definition of "groups of jobs", "job level", "job rate", "representative job level", "predominantly female" and "predominantly male group of jobs" and "pay equity plans" become vitally important. Yet these terms are unclear and replete with pitfalls for implementation. We are advised, for example, that these definitions were developed without consideration as to how they mesh with the new classification system slated to become fully effective in December 1986. How will Bill 105 actually work if more women are concentrated in fewer job classes?

The implementation timetable set out in s.11 is particularly incomprehensible. To decipher the section requires the use of a flow chart. Given the limited number of bargaining units in the public service and the relatively small number of unorganized employees, there seems little justification for distinctions between plans. In Manitoba, all employees are covered by a single plan immediately.[1] This makes sense, since many disparities in pay occur across bargaining units and between the organized and unorganized sectors. We are concerned that the artificial complexity of "Part III - Part VI plan" distinctions is merely a mechanism of delay.

RECOMMENDATION #2

A) THE LANGUAGE OF BILL 105 NEEDS TO BE SIMPLIFIED AND CLARIFIED, SO THAT THE OPERATION OF THE LEGISLATION IS APPARENT TO ALL EMPLOYEES.

B) DEFINITIONS NEED TO BE CLARIFIED AND MISLEADING REFERENCES REMOVED.

C) "PART III - PART VI PLAN" DISTINCTIONS SHOULD BE REMOVED, AND ONE CONSOLIDATED PAY EQUITY PLAN BE REQUIRED APPLICABLE TO ALL EMPLOYEES AT THE SAME TIME (AS IN MANITOBA).

## CONCEPTUAL DEFECTS IN BILL 105

The Advisory Council has applied the principles of pay equity discussed in Part A to Bill 105 and clearly the draft legislation falls short of our expectations. We are concerned by the express objective of the Bill, the limited coverage, the pre-occupation with

gender predominance at the expense of job content, the exclusions, the minimal pay adjustments, the scheme for implementation, and the mechanisms for enforcement. All suffer from conceptual flaws which will seriously limit the possibility of achieving pay equity.

Gender Predominance

The title of the Bill, its explicit purpose, and its entire approach are limited to gender discrimination in predominantly female groups of jobs. The primary focus of the Bill is not comparisons of job content, as equal value requires, but gender predominance. We are adamantly opposed to statutory criteria for gender predominance. The proposed criteria for "predominantly female" (60%) and "predominantly male" (70%) are arbitrary, restrictive, and rife with potential for abuse. At their worst, they may create a new quota system that would undermine employment equity initiatives. The potential for additional designations by agreement or by Regulation is an illusory offer of flexibility.[2] The Government, as employer or wearing the hat of Lieutenant-Governor passing Regulations, has a veto over any extension of designation. Neither process is subject to debate in the Legislature. There is no right to inclusion. Groups with less than the statutory criteria will be dependent on Government largesse. In addition, Bill 105 provides no opportunity for unorganized workers to initiate extended designations.[3] They are totally dependent on "the employer" (the Government). Given that the Government now appears committed to statutory gender predominance

guidelines, what expectation can we have that it will adopt a more liberal approach in the future on a case-by-case basis? Why should access to pay equity be a privilege, and not a right?

RECOMMENDATION #3

A) PAY EQUITY SHOULD BE AVAILABLE TO EVERYONE IN THE PUBLIC SERVICE BASED ON JOB CONTENT.

B) THE TITLE AND PURPOSE OF BILL 105 SHOULD DELETE REFERENCE TO GENDER PREDOMINANCE.

C) THERE SHOULD BE NO GENDER PREDOMINANCE GUIDELINES CODIFIED BY STATUTE.

Groups of Jobs/"Representative Job Levels"

The Bill explicitly addresses only discrimination between groups of jobs. It provides no opportunity for individual comparisons, one woman versus several men or several women versus one man. "Group of jobs" is defined vaguely, and, as indicated previously, bears an uncertain relationship (if any) to existing and projected public service job classification schemes. If this key term is left to negotiation, what actual rights do employees have? What tradeoffs will the employer (the Government) require for each more precise "group of jobs" the union proposes? The Manitoba Pay Equity Act at least specifies that groups are those with 10 or more incumbents.[4]

The Bill is even more restrictive. It provides for pay equity comparisons only between "the representative job level in a

predominantly female group of jobs" (the presumably lower levels, with the greatest number of employees) and male comparison groups of equal value. Once the percentage differential between these groups is determined, that same percentage adjustment will apply to all job levels in the same female group of jobs. In other words, within each group of jobs, there will only be one comparison.

Although this scheme accommodates the need to maintain proportional value between related job levels, it gives individuals and groups at other job levels no opportunity for comparison between the actual value of their job content and the actual value of comparable male positions. If the largest level of employees has a relatively low percentage adjustment to achieve actual pay equity, that same low percentage will be applied arbitrarily to other related job levels. Employees in these levels will receive "notional pay equity" based on across-the-board increases rather than any real comparison of worth or worth in job content. Such across-the-board increases affecting large numbers of employees will make it appear as if pay equity is achieving its goal. It may reduce some wage disparities between some groups. In fact, however, it will perpetuate the relative status quo, leaving actual equal pay for work of equal value for the majority of employees an unrealized dream. Helen Remick notes that

> while it is cheaper to limit evaluation to a few classes, maintaining traditional alignments of classes, the eventual evaluation of all occupations is a good idea. One does a comparable worth study precisely because one is questioning traditional alignments.[5]

The basic flaw in the Government approach is that Bill 105 does not anticipate one actual job evaluation scheme applied to all jobs or classifications within the public service. Nor does it anticipate actual comparisons between all jobs or classifications within that scheme. In this essential feature Bill 105 differs significantly from the Manitoba Pay Equity Act, to the disadvantage of public servants in Ontario. Bill 105 codifies one approach to job comparison - a comparison of benchmark jobs only, as a basis for across-the-board adjustments - and imposes this process on the entire sector.

In our view, this may be a first step. It will not, in itself, however, achieve actual equal pay for work of equal value for the bulk of employees.

RECOMMENDATION #4

A) PAY EQUITY IN THE PUBLIC SERVICE SHOULD BE BASED ON A COMPREHENSIVE JOB EVALUATION SCHEME AND ACTUAL COMPARISONS BETWEEN ALL JOBS OR CLASSIFICATIONS WITHIN THAT SCHEME.

B) THE COMPARISON OF BENCHMARK JOBS AND RELATED ACROSS-THE-BOARD INCREASES APPROACH IMPOSED BY BILL 105 SHOULD BE REDEFINED AS AN INTERIM INITIAL ADJUSTMENT ONLY PENDING THE RESULTS OF A COMPREHENSIVE JOB EVALUATION SCHEME.

Exclusions

The Bill in s.8 excludes large numbers of employees from consideration both in determining gender predominance and in the application of pay equity plans. Again, we are opposed in principle

to any statutory exclusions. Compensation should be based on job content, not on the nature of the incumbent or how long they work in the position. The exclusions invite restructuring to avoid application of the Act.

RECOMMENDATION #5

S.8 OF BILL 105 SHOULD DELETED.

Pay Adjustments

The proposed statutory provisions with respect to pay adjustments are minimal in the extreme. The Advisory Council is opposed to:

* a definition of pay equity which says "pay equity is achieved" as long as the job rate for the female group is "at least as great" as the lowest job rate of comparable male groups (s.5(2)). In Manitoba, the equivalent section provides for minimum adjustments equal to the average or projected average of comparable male jobs;[6]

* a statutory provision that higher rates of pay between comparable male groups "shall be deemed not to reflect gender bias" (thereby depriving female comparison groups who want the higher pay level from claiming gender discrimination) (s.5(4));

* the 18-month delay in mandatory payment of first adjustments;

* tying Part V and Part VI first adjustments to "last payments in all earlier plans" (s. 11(c)(d));

* lack of any retroactive or back-pay provision;

* provisions for permitting an extension of time for filing plans and paying adjustments (s.19(2)(m)).

RECOMMENDATION #6

A) THE METHOD OF WAGE ADJUSTMENT SHOULD NOT BE CODIFIED AT THE LOWEST COMPARABLE JOB RATE. SUCH CODIFICATION IS REDUNDANT.

B) S.5(4) OF BILL 105 SHOULD BE DELETED.

C) S.11(3)(a)(i), (b)(i) OF BILL 105 SHOULD PROVIDE FOR IMMEDIATE FIRST ADJUSTMENTS. THE 18 MONTH DELAY SHOULD BE DELETED.

D) IF PART V AND PART VI PLANS ARE TO BE PHASED IN (WHICH WE OPPOSE), FIRST ADJUSTMENTS IN S.11(3)(c)(d) SHOULD NOT BE TIED TO LAST PAYMENTS ON EARLIER PLANS.

E) BILL 105 SHOULD REQUIRE BACK-PAY ADJUSTMENTS FROM THE DATE OF PROCLAMATION.

F) S.11(7) AND S.19(2)(m) OF BILL 105 SHOULD BE DELETED.

Development of Pay Equity Plans

a) Timeframe

Depending on how the Bill actually applies to various bargaining units and unorganized groups of jobs, any pay equity (even as defined in the Bill) may not be available until several years down the road when Part VI plans become fully effective. We have already expressed our concerns about what we regard as the unjustifiable delay inherent in this implementation plan (see p.38).

We also have concerns about the timeframe proposed for developing plans. If systematic level-by-level, or job-by-job comparisons were carried out in developing plans, much more time would be required at the

initial stage (as in Manitoba).[7] The ninety-day timeframe for filing plans appears to substantiate our suspicion that the comparisons will be conducted in a perfunctory fashion. This is reinforced by the wording of s.11(1) which suggests that job audits will occur after pay equity plans are filed.

In our view, more time is required at the earlier developmental stage, and less time for the first adjustments. If public servants must wait for pay equity adjustments, then at least let them wait for adjustments that reflect actual comparisons of job content based on a universal job evaluation scheme rather than some notional across-the-board increase that has little relationship with equal pay for work of equal value. Alternatively, the benchmark approach could be undertaken as an interim measure and provision made for immediate payment of initial adjustments.

b) Role of Unorganized Employees

Bill 105 is also weak in its treatment of the unorganized sector. The Bill makes no provision for the participation of unorganized workers in developing pay equity plans. The Manitoba Pay Equity Act, by contrast, creates a role for "employee representatives" acting on behalf of unorganized workers.[8] Such representatives are elected according to procedures established by Regulation. They have the same status as bargaining agents for organized employees - the same right to full disclosure and to participate in the development of plans, the same obligation to bargain in good faith;[9] file the

agreement with the enforcing agency,[10] and refer any disputes to adjudication.[11] The Advisory Council strongly supports this as a model for Ontario.

c) Rights of Employees

Bill 105 requires amendment to protect the rights of employees. As yet, it does not include any protection from reprisals for employees who negotiate plans, complain to the Commission, or testify in a hearing.[12] Nor is there any provision for the mandatory disclosure of information about job content, wage schedules or even about the pay equity plan itself. In negotiating pay equity plans, we would prefer, as in Manitoba, an explicit statutory duty on the employer to "disclose to the bargaining agents and employee representatives affected, information in its possession or control relevant to the implementation of pay equity".[13] Does filing the plan with the Commission mean that details of the plan are to be shared at the same time with all affected employees? Or are plans, once filed with the Commission, deemed to be available for inspection? How are employees to exercise any right to complain if there is no mandatory right of immediate access to the details of the plan? In our view, there should be a posting requirement with the usual penalties for removal of notices.[14]

RECOMMENDATION #7

A) THE TIMETABLE FOR DEVELOPMENT OF PAY EQUITY PLANS SHOULD BE EXTENDED SIMILAR TO THE MANITOBA MODEL, TO ALLOW FOR A COMPREHENSIVE JOB EVALUATION SCHEME AND ACTUAL COMPARISONS.

B) ALTERNATIVELY, THE BENCHMARK COMPARISON SHOULD BE RESTRUCTURED AS AN INTERIM ADJUSTMENT WITH INITIAL PAYMENTS DUE IMMEDIATELY.

C) BILL 105 SHOULD BE AMENDED TO PROVIDE FOR THE PARTICIPATION OF UNORGANIZED WORKERS THROUGH "EMPLOYEE REPRESENTATIVES" AS IN MANITOBA.

D) BILL 105 SHOULD BE AMENDED TO PROTECT THE RIGHTS OF EMPLOYEES INCLUDING:

1) PROTECTION FROM REPRISALS;

2) MANDATORY DISCLOSURE OF INFORMATION NECESSARY TO DEVELOP AND IMPLEMENT THE PAY EQUITY PLAN;

3) POSTING REQUIREMENTS FOR ALL PAY EQUITY PLANS;

4) PUBLIC ACCESS TO PAY EQUITY PLANS FILED WITH THE COMMISSION.

Administration/Enforcement

The Advisory Council has serious concerns about the enforcement mechanisms proposed to administer the pay equity proposals. We fear that the Government has not fully appreciated the complexity of creating mechanisms to enforce rights against itself. Nor has it assessed the impact of its proposals on the proactive role of the enforcement agency. We shall examine these concerns in greater detail.

a) No Ministerial Intervention

We are opposed to Ministerial intervention to appoint a single arbitrator (and perhaps even a second arbitrator) to resolve an impasse in developing Part III and Part V plans (s.13). The Minister is a member of the Government, and as employer, is party to the proceedings. There is an inherent conflict of interest which may make the appointment of an arbitrator (or a particular nominee) subject to extraneous political considerations. There should be an automatic referral to tripartite arbitration as a matter of right. The Arbitration Board should be chosen in the usual fashion, with employer and employee representatives and an independent chairperson.[15] In our view, the specific substantive power of the Arbitration Board should be set out in the statute, as in Manitoba, including the power to make orders settling the matter in dispute.[16] An order of the Arbitration Board should be filed as if an order of the Pay Equity Commission under s.20(4) of Bill 105 subject to enforcement as an order of the court under s.21.[17]

RECOMMENDATION #8

A) S.1(1) OF BILL 105 DEFINITION OF "ARBITRATION" SHOULD BE AMENDED TO PROVIDE FOR A TRIPARTITE ARBITRATION BOARD.

B) S.13 OF BILL 105 SHOULD BE AMENDED TO PROVIDE FOR REFERRAL TO TRIPARTITE ARBITRATION AS A MATTER OF RIGHT WITHOUT REFERENCE TO THE MINISTER.

C) S.13 OF BILL 105 SHOULD BE AMENDED TO:

1) SET OUT THE SPECIFIC REMEDIAL POWERS OF ARBITRATION BOARDS, INCLUDING THE POWER TO MAKE BINDING ORDERS;

2) PROVIDE THAT SUCH ORDERS HAVE THE SAME EFFECT AS ORDERS MADE BY THE PAY EQUITY COMMISSION UNDER S.20(4), AND ARE SUBJECT TO ENFORCEMENT AS A COURT ORDER AS IN S.21.

b) An Independent Commission

It is absolutely vital, for the credibility and legitimacy of the entire program, that the Pay Equity Commission actually be, and be seen to be, independent of the Government. It should have its own resources and be free to exercise its powers and deploy what staff it requires without reference to the Government (i.e. the employer). Although it would be useful to have access to Government services and facilities if the Commission deems it necessary, the Commission should not be required to use such facilities (as s.17(6) implies), nor to depend on secondments to perform its functions. Similarly, the Commission should not have to seek Management Board approval to engage professionals or experts on contract (s.17(7)).

Although this may be the customary practice with Government-created boards and agencies, it is inappropriate when the Government itself is

party to the proceedings. In our view, a preferable approach may be to establish the Commission like the Ombudsman, with substantial independence and direct accountability to the Legislative Assembly.[18]

RECOMMENDATION #9

A) S.17(6) OF BILL 105 SHOULD BE AMENDED TO PROVIDE THAT THE COMMISSION SHALL HAVE ITS OWN INDEPENDENT RESOURCES, AND MAY USE GOVERNMENT SERVICES OR FACILITIES IF APPROPRIATE.

B) S.17(7) OF BILL 105 SHOULD BE AMENDED TO DELETE ANY REQUIREMENT OF MANAGEMENT BOARD APPROVAL.

C) THE COMMISSION SHOULD HAVE SUBSTANTIAL INDEPENDENCE AND BE DIRECTLY ACCOUNTABLE TO THE LEGISLATURE, LIKE THE OMBUDSMAN.

c) Role of the Commission

Clearly, the intention of Bill 105 is that the Commission assume a supervisory proactive role in implementation and enforcement. It has power to receive and review plans, direct amendments to plans, conduct enquiries, monitor implementation, and make orders with respect to compliance. Yet there is no provision for an ongoing supervisory role for the Commission. We note, for example, that s.26 of Bill 105 does not empower the Commission itself to initiate complaints for "gender-based compensation practices" discovered after completion of adjustments. If, as we believe, the achievement of pay equity requires more than the adjustments anticipated by Bill 105, the powers of the Commission must be reviewed and extended accordingly.

There is also some confusion in the roles Bill 105 assigns to the Commission. On the one hand, the Commission has a duty to review every pay equity plan filed with it and to decide whether it complies with the intent and purposes of the Act (s.20(1)). It also has the power to impose plans (s.20(4)). At the same time, it has the power to inquire into, investigate and determine complaints under Part VIII. How can the Commission which is charged with review of all plans then sit in judgment on matters in which it has already participated? What model of enforcement is intended - that of a Labour Relations Board? Or a Human Rights Commission? Which is preferable? As Bill 105 now stands, there is an inherent conflict in rules which is contrary to the rules of natural justice, established practice, and perhaps even the guarantee of a fair hearing provided by the Canadian Charter of Rights and Freedoms.

In our view, these difficulties make it imperative that an independent tribunal be created to deal solely with the adjudication of disputes. For all the reasons set out in Part A, such a tribunal would protect the rights of disputants and free the Commission to pursue its proactive role.

RECOMMENDATION #10

A) THE ONGOING PROACTIVE ROLE OF THE PAY EQUITY COMMISSION SHOULD BE EXAMINED AND POWERS DEFINED ACCORDINGLY, INCLUDING THE POWER UNDER S.26 TO INITIATE COMPLAINTS.

B) AN INDEPENDENT APPEALS TRIBUNAL SHOULD BE ESTABLISHED TO ADJUDICATE COMPLAINTS.

d) Right to a Hearing

The Advisory Council is particularly disappointed that Bill 105 does not provide an absolute right to a hearing. Under the proposed s.18(6), hearings may be anticipated when the Commission makes an order for compliance, approves a new designation of "predominantly female", extends a time limit, orders or amends a pay equity plan, or hears a complaint. The Commission, however, may dispense with a hearing in favour of written submissions by the parties.

In our view, this is not good enough. The right to a full hearing, including an opportunity to know the case against one, present one's case and cross-examine witnesses is essential to the procedural fairness now widely acknowledged by the courts wherever statutory rights are at issue. Bill 105 should take account of these developments and be amended accordingly.

To clarify the procedure, Bill 105 should specify that The Statutory Powers Procedure Act applies to all proceedings before Tripartite Arbitration Boards, the Commission and the Tribunal.[19]

RECOMMENDATION #11

A) S.18(6) SHOULD BE AMENDED TO PROVIDE AN ABSOLUTE RIGHT TO A HEARING.

B) BILL 105 SHOULD SPECIFY THAT THE STATUTORY POWERS PROCEDURE ACT APPLIES TO ALL PROCEEDINGS BEFORE TRIPARTITE ARBITRATION BOARDS, THE COMMISSION AND THE TRIBUNAL UNDER THIS ACT.

e) Complaints

The provisions for complaints set out in Part VIII are particularly restrictive. S.25(1) specifies limited types of complaints that can be filed and s.25(2)(3) imposes strict limitation periods when these complaints can be brought. We have been advised that limitation periods are necessary to avoid delays in implementation.

In our view, this approach to complaints is wholly misconceived for several reasons:

* there is no provision for third-party complaints (representing unorganized employees, for example);
* types of complaints should not be codified, as such codification becomes restrictive;
* the limitation periods are unnecessary and unrealistic. Employees may not have the knowledge, expertise and resources to react immediately to new developments. To bar a complaint because the facts only became apparent after 90 days is patently unfair;
* filing a complaint should not act as stay of proceedings. Bill 105 should provide for back-pay awards and retroactive adjustments to correct problems found to have occurred.

The general prohibition and complaint provision in s.26 is also extraordinarily weak. It kicks in only following the completion of compensation adjustments pursuant to all pay equity plans five or six years down the road. There is no provision for third-party complaints or Commission-initiated complaints, nor for protection against reprisals. S.27 (linked with s.18(6)) provides no absolute right to a hearing.

RECOMMENDATION #12

A) S.25 OF BILL 105 SHOULD BE AMENDED TO DELETE SPECIFIC REFERENCES TO TYPES OF COMPLAINTS AND THE PROPOSED LIMITATION PERIODS.

B) THE GENERAL COMPLAINTS PROVISION IN S.26 SHOULD APPLY IMMEDIATELY UPON PROCLAMATION. PROVISION SHOULD BE MADE FOR THIRD PARTY COMPLAINTS AND COMMISSION-INITIATED COMPLAINTS.

C) PART VIII SHOULD INCLUDE AN ABSOLUTE RIGHT TO A HEARING OF COMPLAINTS AND PROTECTION FROM REPRISALS.

f) Assorted Concerns re Implementation and Enforcement

The Advisory Council has other concerns and questions with respect to Bill 105 that are best summarized clause-by-clause:

* s.1(1) definition of "compensation" is a good one, and we do not want to see it amended by Regulation of the Government (the employer) without parliamentary scrutiny. The powers set out in s.28(1)(b) should be deleted;

* s.1(1) definition of "group of jobs" is not adequate, but again we do not want to see it subject to unilateral amendment by Regulation of the Government (the employer). S.28(1)(c) needs to be deleted or amended to provide for consultation and agreement of employer and employees;

* s.2 should provide that this Act has primacy over all other Acts, and include related collateral amendments the Ontario Crown Employees Collective Bargaining Act and the Public Service Act;[20]

* s.19(2)(1) should be amended to enable employees also to apply for extended designations;

* s.22(2) allowing reconsideration of decisions has significant potential for abuse, unless amendments structure the exercise of this power and protect the rights of parties.

RECOMMENDATION #13

AMENDMENTS SHOULD BE MADE AS INDICATED TO S.19(2)(1), S.21, S.22(2) AND S.28(1)(b)(c) SHOULD BE DELETED.

## SCOPE OF BILL 105

In addition to the conceptual flaws we have discussed, the Advisory Council has two major concerns about the scope of Bill 105. The first is with coverage. The second is with the need for employment equity.

### a) Coverage

There is considerable concern that Bill 105 does not extend to the broader public sector. Under the Wage Restraint laws, the entire broader public sector was included. Now, when remedial legislation beneficial to employees is introduced, that broader public sector is excluded. If two bills are necessary, the Advisory Council supports the demand that the broader public sector be included now. It is our position that the remedy offered by Bill 105 is minimal in any event and can only be regarded as a first step. Extending the approach to the broader public sector would not prove unduly disruptive. The experience there would provide more examples of what to expect in the private sector, than can the unique conditions of the public service narrowly defined. Manitoba's Pay Equity Act includes the broader public sector; Bill 105 should as well.

Including the broader public sector would also enable the Government to phase in implementation of contract compliance programs. Agencies, services and programs dependent on Government funding could be required to develop pay equity plans as part of their budget planning. Again, experience within the broader public sector would prove useful in subsequent application across the Province.

RECOMMENDATION #14

A) BILL 105 SHOULD BE EXTENDED TO INCLUDE THE BROADER PUBLIC SECTOR AS DEFINED BY THE WAGE RESTRAINT LAWS.

B) CONTRACT COMPLIANCE WITHIN THE PUBLIC SECTOR SHOULD BE IMPLEMENTED IMMEDIATELY.

b) Employment Equity

There is a consensus that pay equity is only part of the total employment equity package. The Government itself acknowledges that initiatives are necessary to promote affirmative action, childcare and upgraded labour standards affecting women workers. The Advisory Council is concerned, however, that such initiatives to date, even within the public service, have had limited impact. In our view, the Pay Equity Commission should be renamed the Employment Equity Commission and charged, among other things, with supervision of mandatory affirmative action plans within the public service. The development of job evaluation schemes and the negotiation of pay

equity plans is an opportunity to assess the role of women in the public service, and together with bargaining agents and employee representatives, plan efforts to overcome the occupational segregation which continues to exist.

RECOMMENDATION #15

A) THE PAY EQUITY COMMISSION SHOULD BE RENAMED THE EMPLOYMENT EQUITY COMMISSION CHARGED WITH THE ADMINISTRATION AND ENFORCEMENT OF ALL EMPLOYMENT EQUITY ISSUES.

B) BILL 105 SHOULD INCLUDE MANDATORY AFFIRMATIVE ACTION.

## ENDNOTES - PART B

1. The Pay Equity Act, S.M. 1985, c.21.

2. Bill 105, s.1(1), s.28(1)(f).

3. Bill 105, s.1(1) definitions refer to "a group of jobs that the employer...designate"; s.19(2)(1) empowers the Commission to approve applications by an employer for additional designations.

4. S.M. 1985, c.21, s.1 definitions of "female-dominated class" and "male-dominated class".

5. Helen Remick "Major Issues in a priori Applications" in Helen Remick ed. Comparable Worth and Wage Discrimination, Temple University Press, Philadelphia, 1984, p.108.

6. S.M. 1985, c.21, s.6(2).

7. The Manitoba Pay Equity Act anticipates that one year is necessary for the public service to select and apply an appropriate job evaluation scheme, (s.9(1)) and two years for crown entities and external agents (s.14(1)) to accomplish this task.

8. S.M. 1985, c.21, s.1 definition of "employee representative".

9. Ibid, s.13(2), s.13(3), s.14(1).

10. Ibid, s.14(2).

11. Ibid, s.15(1).

12. C.f. Labour Relations Act R.S.O. 1980, c.228, s.66, s.80; Crown Employees Collective Bargaining Act, R.S.O. 1980, c.108, s.29(2), s.37.

13. S.M. 1985, c.21, s.13(2)(b).

14. Labour Relations Act, R.S.O. 1980, c.228, s.81.

15. Ibid, s.44; Crown Employees Collective Bargaining Act, R.S.O. 1980, c.108, s.10, s.11.

16. C.f. the remedial authority of the Arbitration Board as described in s.10(7) of the Manitoba Act with the procedures in s.13(2) - (11) of Bill 105.

17. As in Labour Relations Act, R.S.O. 1980, c.228, s.44(11).

18. C.f. Ombudsman Act R.S.O. 1980, c.325.

19. Statutory Powers Procedures Act. R.S.O. 1980, c.484.

20. R.S.O. 1980, c.418.

## APPENDIX

### ONTARIO ADVISORY COUNCIL ON WOMEN'S ISSUES
### REPORTS PREPARED ON EQUAL PAY FOR WORK OF EQUAL VALUE


1978 Bill #3: Equal Pay for Work of Equal Value. A presentation to the Standing Committee on Resources Development. January, 1978.

1980 Employment Strategies for Women in the 1980's. April, 1980.

1984 Bill #141: An Amendment to the Employment Standards Act. A Statement to the Standing Committee on Resources Development. January 10, 1984.

1984 The Proceedings of a Forum on Equal Value. February 3 and 4, 1984.

1986 Draft Discussion Paper on the Ontario Government Green Paper on Pay Equity. January 31, 1986.

1986 The Proceedings of a Forum on Pay Equity. March 7, 1986.


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